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C O N F I D E N T I A L SECTION 01 OF 02 NAIROBI 004749

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TAGS: [PGOV](#) [PREL](#) [ASEC](#) [KDEM](#) [KE](#)

SUBJECT: MORE DEATHS AS KENYA HEADS INTO CONSTITUTIONAL REFERENDUM

REF: A. NAIROBI 4551

[B](#). NAIROBI 3847

Classified By: Political Counselor Michael J. Fitzpatrick for reasons 1
.4 (b,d)

[1](#)1. (C) SUMMARY: With just one week remaining before the constitutional referendum, four more Kenyans died in police clashes at an Orange ("No") rally. Meanwhile, while the Banana ("Yes") team has resorted to more underhanded methods (such as scheduling presidential travel to force cancellation of planned "No" rallies) to thwart Orange efforts. A November 15 a court ruling allowing the referendum process to continue denied the government-backed pro-draft constitution team an opportunity to walk away from the constitutional race. The debate, which has become a proxy battle for power in Nairobi, will continue at least until November 21 -- and likely well beyond. END SUMMARY.

ORANGE SUPPORTERS CLASH WITH POLICE

[1](#)2. (U) After a two-week hiatus from deadly violence, four more Kenyans died during a November 11 "No" rally in Likoni, on the coast south of Mombasa, which police disrupted for being "illegal." A fiery riot erupted when officials denied the Orange team permission to hold the event as it coincided with President Kibaki's "impromptu" visit to the area. The latest violence renewed allegations of excessive use of force by police (the same was said after four deaths at a Kisumu rally on October 29 (ref A)). Mombasa was only his second foray out of Nairobi to campaign for the proposed draft constitution, but President Kibaki will follow his coast trip with a visit to Western Province from November 15, where Orange also has previously planned rallies.

[1](#)3. (C) Following the violence, reports emerged that the government had canceled the last week of "No" rallies. Although, according to the media, Internal Security Minister John Michuki confirmed that he had indeed called off the Likoni rally, Coast NARC Coordinator Karigithu dismissed the rumor of a blanket ban as propaganda to taint the government's image. Equally insistent, "No" team referendum steering committee member Josephine Odhiambo told Poloff that her group was going ahead and that Orange rallies will continue.

ELECTORAL COMMISSION: TAKING A STAND OR STANDING BY?

[1](#)4. (C) Electoral Commission of Kenya (ECK) Vice Chairman Gabriel Mukele had announced November 7 that the ECK would ban further campaigning if there were any more deaths in connection with "Yes" or "No" rallies. Mukele's reprimand recalled an earlier statement from the ECK requesting the two teams to refrain from holding events in advance of the "official" campaign period (ref B). The Vice Chairman's previous warning was largely ignored, apart from retorts that the organization was toothless and thus unable to enforce any policy decrees. Asked about the ECK's follow-up on its November 7 statement in light of the renewed violence, Mukele told Poloff that he and the other chairmen were meeting on November 14 to consider the matter and that "something will be coming very soon." Asked about the Commission's ability to make good on its warning, Mukele referred to provisions in the constitution and the electoral code of conduct.
(COMMENT: But ECK is powerless to enforce its opinions. END COMMENT.)

THE REFERENDUM IS STILL ALIVE

[1](#)5. (U) With the campaign period winding down (and the intensity level ratcheting up), there are still calls to postpone or cancel the referendum. In a November 12 interview, while reaffirming her neutrality in the debate, Nobel Peace Prize laureate (and Assistant Environment Minister) Wangari Maathai questioned the wisdom of "rushing" into a decision on the constitution. Calling the referendum "a farce," she said that national polarization along tribal lines was being used as fuel for an intra-elite battle for power. Indeed the entire process threatened to screech to a halt on November 15, but in an hours-long decision before

cabinet ministers and members of Parliament, the Kenyan High Court ruled against a suit alleging that the constitutional review was illegitimate. Noting that it would be against the public interest to call off the referendum, the court did not find the argument sufficient to determine that the process was illegal.

16. (C) COMMENT: The "Yes" team's underhanded attempts to disrupt Orange plans by scheduling coincidental presidential travel, exacerbating the intense animosity between figures on both sides, further highlights the extent to which the referendum process has cleaved enduring fissures in the political landscape. The ECK, for all its good intentions to run a free, fair, transparent, and non-violent vote is not likely to take more than a rhetorical stand against campaigners, illustrating the difficult job it has of trying to officiate a clean fight without the tools to do so. Denied the opportunity to walk away from the constitutional race intact, the largely government-backed pro-draft constitution team will intensify its efforts (read: step-up the favor granting) to ensure a win for the document and to retain the upper hand in the national political debate in Nairobi. As the President's strategic advisor told us after the court's ruling, "we are working at full throttle." END COMMENT.

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